



OLR RESEARCH REPORT

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LAWS CONCERNING THE REMOVAL OF DECEASED TENANTS' POSSESSIONS

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You asked if surrounding states have laws specifying how landlords must dispose of a deceased tenant's possessions if the tenant's next of kin fails to claim them or open an estate.

SUMMARY

We were unable to locate any laws in surrounding states that specify how landlords must dispose of a deceased tenant's possessions under the circumstances you described. But we identified at least six other states that have enacted such a law – Florida, Maryland, North Carolina, Oklahoma, Texas, and Virginia.

The laws differ widely on the (1) amount of time a landlord must wait before regaining possession of the unit; (2) type of notice the landlord must provide to the courts, tenant's contact person, or next of kin; and (3) disposition of the deceased tenant's property.

Florida allows landlords to regain possession of a deceased tenant's dwelling unit if it has been abandoned. To be considered abandoned, among other things, at least 60 days must have elapsed since the tenant's death. Landlords may then dispose of the remaining property if the tenant's lease agreement includes a provision stating that, upon the tenant's death, the landlord is not liable for storing or disposing the property.

Texas, Oklahoma, and Virginia allow landlords to dispose of a deceased tenant's property if the tenant's emergency contact does not claim it. Texas' and Oklahoma's laws allow landlords to remove and subsequently discard a deceased tenant's possessions if (1) they notify the person authorized by the tenant in the rental agreement to remove his or her possessions and receive the security deposit, (2) this authorized person fails to remove it 30 days after receiving the notice, and (3) no one else comes forward to claim it. Virginia, on the other hand, allows landlords to dispose of a deceased tenant's property after providing at least 10 days notice to the tenant's contact person or the tenant (presumably the tenant's estate) if there is no contact person identified in the rental application or agreement.

North Carolina law establishes a multipart procedure landlords must follow to regain possession of and remove the property from a dwelling unit if the only tenant living there dies. Landlords initiate the process by filing an affidavit with the court establishing, among other things, that (1) no executor has been appointed for the estate and (2) the landlord has attempted to contact the tenant's emergency contact. Landlords must then store the property for 90 days, after which they may sell it or deliver it to a nonprofit organization. The sale proceeds, after deducting for unpaid rent and the landlords' other costs, are returned to the court.

Unlike the other states, Maryland requires landlords to bring a summary eviction action against the deceased tenant to regain possession of the unit. If the court finds in favor of the landlord, the remaining property is presumed abandoned and escheats to the state.

REMOVAL OF A DECEASED TENANT'S POSSESSIONS

Florida

Under Florida law, a landlord may regain possession of a dwelling unit after the only tenant living there dies when the unit has been abandoned. The law specifies that the unit is considered abandoned if: (1) personal property remains on the premises, (2) rent is unpaid, (3) at least 60 days have elapsed since the tenant's death, and (4) the landlord has not been notified in writing that an estate has been opened or that a personal representative (i.e., executor) has been appointed. After regaining possession of the unit, the landlord is not liable for storing or disposing of the tenant's property if the lease agreement includes a provision to that effect (Fla. Stat. §§ 83.59, 83.67).

Texas and Oklahoma

Both Texas and Oklahoma require tenants, upon a landlord's written request, to provide the name and contact information for a person who should be contacted upon the tenant's death to remove his or her possessions and receive the security deposit. Upon the tenant's death, the law allows landlords to remove and store all of the property found on the premises and requires landlords to turn the property over to this authorized person. The landlord may discard the property if (1) the authorized person has not removed it within 30 days after receiving a written request by certified mail to do so and (2) no other person has claimed it.

Texas and Oklahoma law also authorizes a tenant and landlord to agree, in a written lease or other agreement, to a different procedure for removing, storing, or disposing of a tenant's property upon the tenant's death (Tex. Property Code Ann. § 92.014 and Okla. Stat. Ann. Tit. 41, § 130.1).

Virginia

Virginia law allows landlords to dispose of a deceased tenant's personal property, under the following conditions, if there is no one authorized by the court to handle probate matters for the estate. Before removing the property, the landlord must provide at least 10 days' written notice to the (1) contact person authorized by the tenant in the rental application or agreement or (2) tenant (presumably the tenant's estate) if there is no contact person identified. The notice must include a statement that any personal property that is not claimed within 10 days will be treated as abandoned property and disposed of as the landlord sees fit (Va. Code Ann. § 55-248.38:3).

Maryland

Under Maryland law, a landlord seeking to regain possession of a dwelling unit after a tenant without a will or next of kin dies may bring a summary eviction action against the deceased tenant.

The landlord must file a written complaint with the court alleging that, to the best of his or her knowledge, the tenant is deceased, intestate (i.e., has no will), and has no next of kin. The court must then issue a summons to be served by the county constable or sheriff upon the dwelling unit's occupant or the deceased tenant's next of kin, if known, to appear before the court. The trial must be held on the fifth day after the complaint was filed. The occupant or next of kin may respond to the

complaint to show cause why the landlord's demand should not be granted.

The constable or sheriff may serve process by delivering the summons to the occupant or next of kin or, if they cannot be found, by posting a conspicuous copy of it on the property. The law deems this posting sufficient service to support a default judgment in favor of the landlord for possession of the premises, together with court costs, but insufficient to support a judgment for the amount of rent due.

If the court finds in favor of the landlord, it must order that possession of the premises be given to the landlord within four days after trial. Any property remaining in the dwelling unit is presumed abandoned and escheats to the state (Md. Code Ann., Real Property §§ 8-401 and -405).

North Carolina

Starting October 1, 2012, a new North Carolina law allows landlords to take certain actions in order to take possession of and remove the property from a dwelling unit after the only tenant living there dies. A landlord must file an affidavit with the clerk of the Superior Court establishing that: (1) at least 10 days have passed since the last paid rental period ended, (2) no executor has been appointed for the deceased tenant's estate, and (3) no affidavit has been filed regarding the estate under the state's small estates law. The affidavit must contain additional information, including (1) the landlord's inventory and good faith estimate of the value of the property remaining in the unit and (2) a description of his or her efforts to contact the person identified in the rental application or agreement as the authorized person in the event of an emergency or the tenant's death.

The landlord must mail a copy of the affidavit to this contact person, or if no one is identified, post the affidavit at the door of his or her primary rental office and the county courthouse.

The landlord must then store the property for at least 90 days. If after this period no executor has been appointed for the deceased tenant's estate and no affidavit has been filed under the small estates law, the landlord can either sell the property or deliver it to a nonprofit organization.

If the landlord chooses to deliver the property to a nonprofit organization, he or she must provide an accounting of the donation to the court clerk. If the landlord instead chooses to sell the property, which

may be by public or private sale, he or she must give written notice of the sale to the clerk and post it at the door of his or her primary rental office.

The landlord may deduct from the sale proceeds any unpaid rent, damages, packing and storage fees, filing fees and sale costs and must then deliver any surplus to the clerk. If the surplus exceeds \$5,000, or if the aggregate of all funds paid to the clerk with respect to one decedent exceeds this amount, the clerk must appoint an administrator or settle the estate under the small estates law. If, on the other hand, the surplus funds are less than \$5,000, the clerk must use the funds to pay any (1) annual allowance the state provides to the surviving spouse and children and (2) subsequent claims against the decedent's estate.

Landlords may instead follow an alternative process if the value of the property is \$500 or less. Rather than file an affidavit with the court, the landlord may deliver the property to a nonprofit organization that agrees to separately identify and store it for 30 days and release it to a person legally authorized to act on the decedent's behalf that comes forward within this 30-day period. The landlord must (1) inventory the property, (2) send a copy of the inventory to the deceased tenant's contact person, and (3) post a notice of his or her actions for 30 days at the door of his or her primary rental office (N.C. Gen. Stat, §§ 28A-25-6. 28A-25-1.2, 42-36.3).

RP:ro